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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN LLC,

Plaintiff,

v.

PALO ALTO NETWORKS, INC.,

Defendant.

Case No. 3:14-CV-04908-RS

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

Courtroom: 3, 17th Floor
Judge: Honorable Richard Seeborg

Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, Patent Local Rule 2-1(b), the Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement, the Court’s Standing Order Regarding Initial Case Management, and the Court’s July 11, 2024 Notice (Dkt. No. 293), the parties to the above-captioned action, Plaintiff Finjan LLC (“Finjan”) and Defendant Palo Alto Networks, Inc. (“PAN”), jointly submit the following Joint Case Management Statement and Proposed Order.

1. Jurisdiction and Service

This is an action for patent infringement arising under 35 U.S.C. § 101 *et seq.* The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b). No issues exist regarding personal jurisdiction or service.

2. Facts

2014: Finjan’s Initial Complaint: Finjan filed this patent infringement case against PAN on November 4, 2014, asserting ten (10) patents: U.S. Patent No. 6,804,780; U.S. Patent No. 7,058,022; U.S. Patent No. 7,418,731; U.S. Patent No. 6,965,968; U.S. Patent No. 7,613,968; U.S. Patent No. 7,613,926; U.S. Patent No. 7,647,633; U.S. Patent No. 8,141,154; U.S. Patent No. 8,255,408; and U.S. Patent No. 8,677,494. The case was assigned to Judge Chen on December 8, 2014 (Dkt. 16). Judge Chen recused himself from the case on October 8, 2015 (Dkt. 56), and the case was reassigned to Judge Hamilton (Dkt. No. 57).

2015-2020: Stay Pending IPRs: In September 2015 and November 2015, PAN filed thirteen petitions for *inter partes* review—covering all ten of the patents asserted in Finjan’s complaint—with the United States Patent and Trademark Office’s Patent Trial and Appeal Board (“PTAB”). (Dkt. No. 63.) On November 30, 2015, PAN filed a motion to stay the case based on the IPR petitions. Pursuant to the parties’ stipulation (Dkt. No. 66), on December 10, 2015, the Court entered an order staying the case pending decisions by the PTAB regarding whether to institute the IPR petitions. (Dkt. No. 67).

On May 23, 2016, the parties filed a joint status report informing the Court that the PTAB decided to institute IPR proceedings on six of the thirteen (6 of 13) petitions filed by PAN, and

denied institution on the other seven (7). (Dkt. No. 68). The six instituted IPRs related to four of the ten patents asserted by Finjan. In the joint status report, Finjan requested that the Court lift the stay, while PAN requested the Court to keep the stay in place pending the resolution of the six IPR petitions. (*Id.*) On May 26, 2016, the Court ordered the stay to remain in place pending the final determination and appeal of the instituted IPR petitions. (Dkt. No. 69)

The chart below summarizes the results of the IPR proceedings for the ten originally-asserted patents.

<u>Patent</u>	<u>PAN IPR Petition</u>	<u>Claims Challenged</u>	<u>Claims Instituted</u>	<u>Claims Invalidated</u>
'633	IPR2015-01974	1-4, 6-8, 13, 14, 19, 28, 34	14, 19	None ¹
'154	IPR2015-01979	1-8, 10, 11	1-8, 10, 11	None
	IPR2016-00151	1-12	1-8, 10, 11	None
'408	IPR2015-02001 IPR2016-00157 (Consolidated)	1, 3-7, 9, 12-16, 18-23, 29, 35	1, 3-7, 9, 12-16, 18-23, 29, 35	None
'494	IPR2016-00159	1-18	1-6, 10-15	1, 2, 6
'780	IPR2016-00165	1-18	None	None
'968	IPR2016-00149	1-12, 24, 33-38	None	None
	IPR2016-00150	1-38	None	
'822	IPR2015-01999	1, 4-6, 8, 9, 12, 16-20, 22, 24, 27	None	None

¹ In a separate IPR filed by Cisco Systems, Inc. (IPR2018-00391), the PTAB found claims 1-4, 8, and 11-13 of the '633 Patent to be unpatentable.

<u>Patent</u>	<u>PAN IPR Petition</u>	<u>Claims Challenged</u>	<u>Claims Instituted</u>	<u>Claims Invalidated</u>
'731	IPR2015-02000	1-22	None	None
'918	IPR2016-00164	1-10, 12-19, 21, 34-36	None	None
'926	IPR2016-00145	1-5, 8-12, 15-19, 22-26, 29, 30	None	None

Following the PTAB's final written decisions in the IPRs, PAN appealed five of the six decisions to the Court of Appeals for the Federal Circuit. As the parties reported in their joint status report filed on December 28, 2020, the Federal Circuit affirmed the PTAB's decisions. (Dkt. No. 79). The last of those Federal Circuit decisions issued on Dec. 16, 2020. (*Id.*)

2021: Lifting the Stay and Finjan's Amended Complaint: Following the IPR decisions and appeals, the parties jointly requested the Court to lift the stay on December 28, 2020. (Dkt. No. 83). Judge Hamilton lifted the stay on January 25, 2021 (Dkt. No. 84). Judge Hamilton set a Case Management Conference for March 18, 2021, and ordered the parties to file a Joint Case Management Statement (Dkt. No. 84). The parties filed a Joint Case Management Statement on March 11, 2021. (Dkt. No. 104.)

During the Case Management Conference on March 18, 2021, Judge Hamilton ordered that the Technology Tutorial be held on September 29, 2021, and the Claim Construction Hearing be held on October 13 or 14, 2021. (Dkt. No. 106.) No dates were set beyond the Claim Construction Hearing, and the parties agreed on all dates prior to the Claim Construction Hearing (Dkt. No. 104).

Finjan filed an Amended Complaint narrowing the case on March 31, 2021 (Dkt. No. 112), asserting the following seven (7) patents. Finjan alleges that it holds all rights, title, and interest in these patents.

- U.S. Patent No. 6,804,780 ("the '780 Patent");
- U.S. Patent No. 7,418,731 ("the '731 Patent");
- U.S. Patent No. 7,613,926 ("the '926 Patent");

- U.S. Patent No. 7,647,633 (“the ’633 Patent”);
- U.S. Patent No. 8,141,154 (“the ’154 Patent”);
- U.S. Patent No. 8,225,408 (“the ’408 Patent”); and
- U.S. Patent No. 8,677,494 (“the ’494 Patent”).

Concurrent with the filing of Finjan’s Amended Complaint, the parties entered into a joint stipulation to dismiss with prejudice Finjan’s claims for infringement (and PAN’s counterclaims and defenses) relating to the other three originally-asserted patents (U.S. Patent Nos. 6,965,968, 7,058,822, and 7,613,918). (Dkt. No. 109). Judge Hamilton entered the order of dismissal on March 31, 2021. (Dkt. No. 111.)

2021: Reassignment to Judge Donato: On August 9, 2021, the case was reassigned to Judge Donato. (Dkt. No. 150.) The dates for the Technology Tutorial and Claim Construction Hearing were vacated in view of the Reassignment Order. But the parties proceeded with Finjan’s Patent Local Rule 3-1 Infringement Contentions (served on April 1, 2021), PAN’s Patent Local Rule 3-3 Invalidity Contentions (served on May 17, 2021), Finjan’s Patent Local Rule 3-8 Damages Contentions (served on July 6, 2021), and PAN’s Patent Local Rule 3-9 Responsive Damages Contentions (served on August 5, 2021). The parties also filed a Stipulated Protective Order, which Judge Hamilton entered on March 31, 2021 (Dkt. No. 110) and a Stipulated ESI Order, which Judge Hamilton entered on April 20, 2021 (Dkt. No. 117).

The parties completed all claim construction discovery on August 16, 2021, including claim construction disclosures pursuant to Patent Local Rules 4-1, 4-2, 4-3, and 4-4. The parties also completed claim construction briefing, including Finjan’s opening claim construction brief filed on August 30, 2021 (Dkt. No. 158), PAN’s responsive claim construction brief filed on September 13, 2021 (Dkt. No. 159), and Finjan’s reply claim construction brief filed on September 20, 2021 (Dkt. No. 163). The parties filed a final amended joint claim construction and pre-hearing statement on September 20, 2021. (Dkt. No. 164.)

In accordance with the Reassignment Order Setting CMC (Dkt. No. 151), the parties filed a Joint Case Management Statement on October 14, 2021 (Dkt. No. 171) ahead of a Case Management Conference scheduled for October 20, 2021. On October 18, 2021, the Court

1 continued the Case Management Conference to January 20, 2022. (Dkt. No. 172.) The parties
 2 filed an updated Joint Case Management Statement on January 13, 2022. (Dkt. No. 176.) On
 3 January 14, 2022, the Court vacated the Case Management Conference, and said it would enter a
 4 scheduling order. (Dkt. No. 181). Six months later, on July 18, 2022, Finjan filed an opposed
 5 motion to move the Court to issue a scheduling order. (Dkt. No. 191.) On August, 23, 2022, the
 6 Court issued its Scheduling Order, resetting, among other dates, the claim construction hearing for
 7 April 11, 2023 and trial for April 8, 2024. (Dkt. No. 194.) The claim construction hearing was
 8 rescheduled five more times: June 1, 2023 (Dkt. No. 228); September 7, 2023 (Dkt. No. 247);
 9 October 26, 2023 (Dkt. No. 254); January 18, 2024 (Dkt. No. 260); and April 18, 2024 (Dkt. No.
 10 265). Each of those dates were also vacated. The trial has also been rescheduled several times.
 11 On September 13, 2023, the Court set the trial date for October 21, 2024. (Dkt. No. 260).

12 2023: Dismissal Without Prejudice of the Three "Downloadable" Patents: The '780
 13 Patent asserted in this case was also at issue in Finjan's co-pending case against ESET, LLC in the
 14 United States District Court for the Southern District of California. In that case, on March 29,
 15 2021, Judge Bencivengo found that the asserted claims of the '780 Patent (and four other Finjan
 16 patents not asserted here) were invalid on the grounds that, as used in those claims and construed
 17 by that court, the claim term "Downloadable" was indefinite. *Finjan, Inc. v. ESET, LLC*, No.
 18 3:17-cv-0183-CAB-BGS ("ESET"), Dkt No. 869 (S. D. Cal. Mar. 29, 2021). On May 20, 2021,
 19 and based on that order, Judge Bencivengo entered judgment of invalidity with regard to those
 20 patents. *Id.* at Dkt No. 875 (May 20, 2021). Although the '926 and '494 Patents asserted here
 21 were not at issue in the *ESET* case, they are both related to the '780 Patent, and claims of the '926
 22 and '494 Patents also include the term "Downloadable." As a result of Judge Bencivengo's *ESET*
 23 ruling, the parties in this case ceased active litigation of the '780, '926, and '494 Patents, and
 24 Finjan did not include claims from those patents in its Preliminary Election of Asserted Claims on
 25 June 21, 2021. Finjan appealed the *ESET* judgment to the United States Court of Appeals for the
 26 Federal Circuit. *Id.* at Dkt. No. 878 (June 17, 2021). On November 1, 2022, the Federal Circuit
 27 reversed the district court's claim construction, vacated its grant of summary judgment, and
 28 remanded the *ESET* case for further proceedings. *Finjan LLC v. ESET, LLC*, 51 F.4th 1377 (Fed.

Cir. 2022). During Finjan’s appeal of the *ESET* judgment, fact and expert discovery in this case continued on the other four patents such that, when the Federal Circuit reversed the *ESET* judgment, the ’780, ’926 and ’494 patents were far behind the others. Accordingly, on May 30, 2023, the parties stipulated to dismiss the ’780, ’926 and ’494 patents from this case without prejudice to Finjan filing a new case on those patents at a later date. Based on that stipulation, Judge Donato subsequently dismissed Finjan’s claims for infringement of those three patents—as well as PAN’s counterclaims and defenses—without prejudice (Dkt. No. 250).

2024: Reassignment to this Court, Claim Construction, and the ’154 Patent: On March 8, 2024, Judge Donato recused himself from all further proceedings in this matter and vacated all pending dates of motions, pretrial conferences, and trial. (Dkt. No. 273.) On March 28, 2024, the Court reassigned the case to Chief Judge Seeborg. (Dkt. No. 274.) After reassignment, the Court convened a Case Management Conference on April 4, 2024, and during the Conference set the Technology Tutorial for May 24, 2024 and Claim Construction Hearing on May 29, 2024. (Dkt. No. 280). The Court held the Technology Tutorial on May 24, 2024, the Claim Construction hearing on May 29, 2024, and issued its Claim Construction Order on June 14, 2024. The chart below summarizes the result of the Court’s claim construction order:

<u>Term</u>	<u>Patent</u>	<u>Construction</u>
“content”	’154	“data or information, which has been modified and is received over a network”
“content processor”	’154	“a processor that processes modified content”
“programming language”	’408	No construction necessary
Preamble “A computer program product...the method comprising:”	’633	Typographical error, corrected to strike “the method”
“downloadable information-destination”	’633	“user device that includes one or more devices or processes that are capable of receiving and initiating or otherwise

<u>Term</u>	<u>Patent</u>	<u>Construction</u>
		hosting a mobile code execution”
“file cache”	’731	“memory for temporarily holding a file”
“incoming files from the Internet”	’731	No construction necessary

The parties subsequently agreed to a Joint Stipulation for Entry of Final Judgment and Order stipulating to non-infringement of the ’154 Patent under the Court’s constructions. (Dkt. No. 291). The Court so-ordered the parties’ stipulation. (Dkt. No. 292).

Finjan’s Infringement Claims: Finjan continues to assert claims from the ’731 Patent, the ’408 Patent, and the ’633 Patent (collectively, the “Patents-in-Suit”). Finjan alleges that PAN has infringed and/or continues to infringe the “Patents-in-Suit” by making, using, selling, offering for sale and/or importing “products and services that utilize the Next Generation Enterprise Security Platform, App-ID, User-ID, Content-ID, Wildfire, Next-Generation Intelligence Cloud, and Targeted Remote Attack Prevention System (‘TRAPS’ also spelled as ‘Traps’),” including: “Next-Generation Security Platform, Next-Generation Firewall, Virtualized Firewall, WildFire Subscription, WildFire Platform, URL Filtering Subscription, Threat Prevention Subscription, and Advanced Endpoint Protection.” (*See, e.g.*, Dkt. No. 112 ¶ 31.) On April 1, 2021, Finjan served Patent Local Rule 3-1 Infringement Contentions and identified the accused products as the Next-Generation Firewalls (“NGFWs”), WildFire, Traps, Threat Prevention, and URL Filtering.

Finjan additionally alleges that PAN has induced and/or continues to induce infringement of the Patents-in-Suit by instructing, directing and/or requiring others to perform the steps of method claims of these patents.

Finjan seeks damages and injunctive relief for PAN’s infringement, as well as a finding that PAN’s infringement has been willful and that this case is exceptional.

PAN’s Defenses and Counterclaims: PAN filed its Answer to Finjan’s Amended Complaint on April 14, 2021 (Dkt. No. 116), denying infringement and asserting affirmative defenses of non-infringement, invalidity, judicial estoppel, prosecution history estoppel and

1 disclaimer, prosecution laches, ensnarement and prior art estoppel, adequate remedy at law,
 2 limitations on damages, 28 U.S.C. § 1498, inequitable conduct as to the '494 Patent and the
 3 '154 Patent, unclean hands as to the '494 Patent and the '154 Patent, failure to mark, and
 4 preclusion. PAN also asserts counterclaims seeking declarations of non-infringement and
 5 invalidity of the Patents-in-Suit. PAN further seeks a finding of an exceptional case.

6 On May 5, 2021, Finjan filed its Answer to PAN's counterclaims (Dkt. No. 121), denying
 7 non-infringement, invalidity, and unenforceability, and asserting affirmative defenses of failure to
 8 state a claim upon which relief may be granted, good faith, and equitable estoppel.

9 **3. Legal Issues**

10 The principal disputed legal issues are:

- 11 • Whether PAN infringes any or all of the Patents-in-Suit, either directly (35 U.S.C.
- 12 § 271(a)) or indirectly (35 U.S.C. § 271(b));
- 13 • Whether the Patents-in-Suit are invalid (35 U.S.C. §§ 101, 102, 103, 112);
- 14 • Whether Finjan's claims are barred by any defense raised by PAN;
- 15 • Whether Finjan is entitled to damages as a result of the alleged infringement of any or all
- 16 of the Patents-in-Suit, and if so, the amount (35 U.S.C. § 284);
- 17 • Whether PAN's alleged infringement has been willful; and
- 18 • Whether this case is exceptional (35 U.S.C. § 285).

19 **4. Motions**

20 (a) Pending Motions

21 There are no pending motions.

22 (b) Anticipated Motions

23 PAN's Motion to Strike/Confirm re Finjan's Infringement Contentions:

24 **PAN Position:** PAN intends to renew its motion to strike Finjan's infringement
 25 contentions as to the '731, and '408 Patents.

26 PAN has filed several motions to strike Finjan's Infringement Contentions. In response to
 27 PAN's first motion to strike, Judge Hamilton ordered Finjan to "serve amended infringement
 28 contentions in accordance with this order" within 30 days (August 19, 2021). (Dkt. No. 146.)

1 Finjan then served amended infringement contentions for the '154 Patent, amending its
 2 contentions as to a single limitation. On September 16, 2021, PAN filed a motion to confirm
 3 Finjan has no operative infringement contentions for the '633, '408, and '731 Patents, and to strike
 4 Finjan's amended infringement contentions for the '154 Patent. (Dkt. No. 161.) On January 13,
 5 2022, Judge Donato agreed that Judge Hamilton's order required amended contentions for all four
 6 of the Patents-in-Suit, but reserved judgment on PAN's motion on the merits and terminated it
 7 without prejudice. (Dkt. No. 177.) Finjan then served amended contentions for the Patents-in-
 8 Suit. PAN moved to strike Finjan's infringement contentions for the '154, '731, and '408 Patents
 9 as deficient. (Dkt. No. 195-3.) On March 27, 2023, the Court terminated PAN's motion without
 10 prejudice, and stated that "claim construction may simplify or eliminate many of the issues raised .
 11 . . [c]onsequently, PAN may renew its motion after claim construction, as developments warrant."
 12 (Dkt. No. 232) (internal quotations omitted). Now that a claim construction order has issued, PAN
 13 intends to renew its motion to strike.²

14 **Finjan Position:** Finjan served amended infringement contentions for the '154, '731, '408,
 15 and '633 Patents on January 28, 2022, totaling more than 1,600 pages that include detailed
 16 infringement theories supported with citations to PAN's technical documents and source code.
 17 There is no basis to strike Finjan's infringement contentions.

18 PAN's Forthcoming Motions Related to the "CTD Engine":

19 **PAN Position:** On March 24, 2023, PAN filed a motion to strike from Finjan's technical
 20 expert reports opinions relying on the "CTD Engine" and the concept of single-pass architecture in
 21 the accused NGFW products due to Finjan's failure to sufficiently disclose these theories of
 22 infringement in its infringement contentions. (Dkt. No. 229-3.) For example, Finjan's experts
 23 opined that the CTD engine performs various limitations of the asserted claims of the '408 Patent
 24 and acts as various structures claimed in the '731 Patent. (*Id.* at 5.) But Finjan did not refer to any
 25 "CTD engine" anywhere in its nearly 3,000 pages of infringement contentions and amended
 26 infringement contentions, let alone articulate how the CTD engine meets any claim limitation.

27 _____
 28 ² The amended infringement contentions that Finjan referenced below were served more
 than one year before the Court's March 27, 2023, decision. (Dkt. N. 232.)

(*Id.*) On April 7, 2023, Finjan filed its opposition to PAN’s motion, arguing that it had sufficiently disclosed these concepts. (Dkt. No. 234-2.) On April 14, 2023, PAN filed its reply. (Dkt. No. 241-3.) On September 27, 2023, Judge Donato granted-in-part PAN’s motion to strike, granting PAN’s request as to the CTD Engine, holding that “opinions that rely on a ‘CTD engine’ in NGFW to show that PAN infringes the ’408 . . . and ’731 patents will be excluded.” (Dkt. No. 262 at 3.) Judge Donato denied PAN’s request as to “single-pass architecture.” (*Id.*)

PAN then requested that Finjan serve redacted expert reports removing all opinions relying on the CTD Engine. The Parties disputed the scope of the redactions to Finjan’s expert reports. Accordingly, PAN intends to file a motion to enforce Judge Donato’s order striking Finjan’s undisclosed opinions relying on the CTD Engine included in Finjan’s technical expert reports.

Finjan’s statement that “Finjan’s amended expert reports regarding infringement of the ’408 . . . and ’731 Patents redact the portions excluded by Judge Donato’s September 27, 2023, Order granting-in-part PAN’s motion to strike” is a mischaracterization. In fact, Finjan’s amended expert reports do not redact those portions of those expert reports that PAN requested be stricken in the motion granted by Judge Donato.

PAN will seek to enforce Judge Donato’s Order regarding the CTD Engine in its forthcoming Summary Judgment briefing, as well as at the motion *in limine* phase as necessary.

Finjan Position: Finjan’s amended expert reports regarding infringement of the ’408, ’154, and ’731 Patents redact the portions excluded by Judge Donato’s September 27, 2023 Order granting-in-part PAN’s motion to strike. The remaining infringement theories in Finjan’s amended expert reports were properly disclosed in Finjan’s amended infringement contentions served on January 28, 2022.

Other: Finjan and PAN each anticipate moving for summary judgment and may file other dispositive and non-dispositive motions as appropriate as the case progresses. The parties understand that the Local Rules of this Court, and applicable paragraphs of the Court’s Standing Order for Civil Cases, Discovery in Civil Cases, and Civil Jury Trials apply to motions filed in this case.

1 **5. Amendment of Pleadings, Addition of Parties, Etc.**

2 The deadline to amend pleadings without leave of the Court passed on April 1, 2021. On
3 that day, Finjan filed an Amended Complaint (Dkt. No. 112) as discussed above.

4 **6. Evidence Preservation**

5 The parties have reviewed the Northern District of California's Guidelines for the
6 Discovery of Electronically Stored Information ("ESI"), the Northern District of California's
7 Model ESI Order, and Checklist for Rule 26(f) Meet and Confer Regarding ESI, including those
8 portions related to evidence preservation. Additionally, the parties have met and conferred at their
9 Rule 26(f) conference and since that time regarding evidence preservation. Each party has
10 implemented a litigation hold with respect to all ESI and hardcopy documents and media
11 identified as relevant to this action.

12 **7. Disclosures**

13 The parties exchanged initial disclosures pursuant to Rule 26(a) on February 12, 2015.
14 The parties exchanged amended initial disclosures on April 30, 2021. On October 25, 2022, PAN
15 served second amended initial disclosures. On December 1, 2022, Finjan served second amended
16 initial disclosures. On December 16, 2022, PAN served third amended initial disclosures.

17 **8. Discovery**

18 Fact Discovery: Fact discovery cut-off was December 23, 2022 (Dkt. No. 194).

19 Expert Discovery: Expert discovery cut-off was March 17, 2023 (Dkt. No. 194).

20 Protective Order: The parties filed a Stipulated Protective Order, which Judge Hamilton
21 entered on March 31, 2021. (Dkt. No. 110.)

22 Service: The parties agree that service via email is acceptable pursuant to Rule 5(b)(2)(E).
23 Documents served on a party shall be emailed to all attorneys of record for that party.³

24 **9. Class Actions**

25 Not Applicable.

26 **10. Related Pending Cases**

27

³ Service upon Finjan via email shall be effective only with Finjan-PAN_Fish-Service@fr.com.
28 Service upon PAN via email shall be effective only with MoFo-PAN-Finjan@mofo.com.

1 Information concerning other pending litigations and proceedings before the United States
2 Patent and Trademark Office involving the Patents-in-Suit is provided at Appendix B.

3 **11. Relief**

4 Finjan seeks entry of judgment finding that PAN has infringed and/or continues to infringe
5 the Patents-in-Suit, both directly and indirectly, and that PAN's infringement has been willful.
6 Finjan also seeks monetary damages, including damages based on a calculation of lost profits or
7 an amount no less than a reasonable royalty. Based on the information produced in this case and
8 the report prepared by Finjan's expert, Finjan anticipates it will seek damages of approximately
9 \$500 million. Finjan further seeks a judgment that this case is exceptional and an award of
10 Finjan's costs and reasonable attorneys' fees. Finjan also seeks an accounting of all sales and
11 revenues, together with pre-judgment and post-judgment interest. Finjan seeks any other relief
12 available under applicable law.

13 PAN seeks a declaration that PAN does not infringe the Patents-in-Suit. PAN further
14 seeks a declaration that the Patents-in-Suit are invalid. PAN also seeks judgment that Finjan filed
15 this action without a good faith basis, and is thus liable for attorneys' fees, expenses, and costs
16 incurred by PAN in connection with this action.

17 **12. Settlement and ADR**

18 Pursuant to ADR L.R. 3-5, the parties reviewed the Court's ADR handbook, discussed the
19 available ADR procedures, and considered whether this case would benefit from an ADR
20 procedure. The parties chose mediation as the ADR process for this case pursuant to ADR L.R. 6.
21 (Dkt. No. 35.) Prior to the stay, a mediation session took place on September 15, 2015 with
22 mediator Vicki Veenker. After the stay and at the Case Management Conference on March 18,
23 2021, Judge Hamilton referred the case to a settlement conference before Magistrate Judge
24 Cousins. (Dkt. No. 106.) The parties have since submitted confidential Settlement Conference
25 Statements to Magistrate Judge Cousins on August 3, 2021, and appeared via Zoom at a
26 Settlement Conference on August 10, 2021. (Dkt. No. 152.) Magistrate Judge Cousins ordered
27 the parties provide the Court with a confidential update on November 2, 2021, with the settlement
28 conference to continue November 9, 2021, at 9:30 am, by Zoom. (*Id.*) Those dates were

1 continued, respectively, to March 4, 2022 and March 11, 2022, at 9:30 am, by Zoom. (Dkt. No.
2 174.) The settlement conference was continued again from March 11, 2022 to June 28, 2022.
3 (Dkt. No. 187.) The parties submitted a second round of confidential Settlement Conference
4 Statements to Magistrate Judge Cousins, and appeared via Zoom at a Settlement Conference on
5 August 28, 2022. (Dkt. No. 190.) Magistrate Judge Cousins ordered the parties provide the Court
6 with a settlement status report by October 14, 2022, commenting on whether, when, and where to
7 schedule the next settlement conference. (*Id.*) The parties submitted the joint settlement status
8 update, and on October 12, 2022, Magistrate Judge Cousins schedule a further settlement
9 conference for April 6, 2023. (Dkt. No. 198.) The parties submitted another joint settlement
10 status update on March 27, 2023, and the same day Magistrate Judge Cousins vacated the further
11 settlement conference scheduled for April 6, 2023, and ordered the parties to provide an update by
12 June 8, 2023, proposing a new date for the conference. (Dkt. No. 233.) The parties submitted an
13 update on June 5, 2023, and the same day Magistrate Judge Cousins ordered the parties to provide
14 further update by September 14, 2023, proposing a new date for the conference. (Dkt. No. 251.)
15 The parties submitted a further update on September 14, 2023, and the same day Magistrate Judge
16 Cousins ordered the parties to provide further update by January 25, 2024, proposing a new date
17 for the conference. (Dkt. No. 261.) The parties submitted a further update on January 22, 2024
18 proposing to continue the further settlement conference to April 25, 2024. Magistrate Judge
19 Cousins has not issued an order regarding the parties' request. On March 11, 2024, the clerk's
20 notice stated the parties are ordered to email a joint settlement status update by April 25, 2024
21 indicating whether, when, and in what format (whether in person or Zoom) a settlement
22 conference is requested. (Dkt. No. 276.) The parties' provided a Joint Settlement Regarding
23 Further Settlement Conference on April 25, 2024, requesting that the Court extend the deadline for
24 the parties to propose a new date for the Further Settlement Conference to 14 days after the Court
25 issues its claim construction order. On July 15, 2024, the Courtroom Deputy to Magistrate Judge
26 Cousins e-mailed counsel for the parties asking to schedule a further settlement conference and
27 offering five dates in August. The parties are conferring regarding a response.

1 **13. Other References**

2 The parties do not believe that this case is suitable for reference to binding arbitration, a
3 special master, or the Judicial Panel on Multidistrict Litigation.

4 **14. Narrowing of Issues**

5 In accordance with Judge Hamilton’s instructions at the Case Management Conference
6 held on March 18, 2021, the parties filed a stipulated case narrowing schedule, which Judge
7 Hamilton entered on June 9, 2021. (Dkt. No. 126.) In accordance with that schedule, Finjan
8 served a Preliminary Election of Asserted Claims on June 21, 2021, and PAN served a Preliminary
9 Election of Asserted Prior Art on July 6, 2021.

10 On January 11, 2023, Judge Donato ordered further narrowing through a second election of
11 asserted claims and asserted prior art. (Dkt. No. 217.) The order allowed Finjan to assert up to 5
12 claims for a single patent, and 14 claims in total for all patents-in-suit, and PAN to assert up to 5
13 prior art references against a single patent, and 14 references in total for all patents-in-suit. (*Id.*)
14 In accordance with Judge Donato’s order, Finjan served its Second Election of Asserted Claims on
15 January 17, 2023, and PAN served its Second Election of Asserted Prior Art on January 27, 2023.

16 **15. Scheduling**

17 The parties’ competing scheduling proposals are set forth in the chart attached hereto as
18 Appendix A.

19 **Finjan Position:** Finjan filed this case on November 4, 2014. (Dkt. No. 1). In response,
20 PAN filed 13 *inter partes* review petitions, and on December 10, 2015, the Court stayed the
21 litigation pending resolution of the IPRs. (Dkt. No. 67; *see also* Dkt. No. 69 (ordering that the
22 stay remain in effect beyond institution until all final written decisions and appeals had been
23 issued).) The IPRs and appeals on all of the asserted patents were concluded by December 16,
24 2020, with 196 of the 199 challenged claims surviving.

25 This Court lifted the stay on January 25, 2021 (Dkt. No. 84.), but trial has been repeatedly
26 delayed through no fault of Finjan’s. Trial has been scheduled and rescheduled twice, most
27 recently to October 21, 2024. (Dkt. No. 194; Dkt. No. 260.)
28

After nearly a decade, Finjan still awaits its day in Court to vindicate its patent rights in the face of PAN's continuing, infringing activities. Any further delay in the resolution of this case is harmful to Finjan. Accordingly, Finjan proposes scheduling trial for the week of February 17, 2025, subject to the convenience of the Court's calendar. Finjan's proposed schedule provides the parties ample time to prepare any dispositive motions and pretrial filings, while promptly resolving this nearly-decade-long action. By contrast, PAN's proposed schedule only invites further, unnecessary delay (*e.g.*, by proposing the parties file their joint pretrial statement ***over five months*** after the parties' jointly proposed hearing date for summary judgment motions).

PAN Position: PAN has identified the soonest available date for PAN's lead trial counsel, fact and expert witnesses, and corporate representatives to attend trial. PAN proposes May 29, 2025 for the pretrial conference. PAN has also identified the week of June 9, 2025 as an available time for trial that would allow time for the parties to brief—and the Court to rule on—dispositive and *Daubert* motions.

16. Trial

The parties have requested trial by jury. Finjan expects that the trial will require approximately five court days. PAN believes it is premature to estimate the time for trial, as the parties do not yet know how many patents and patent claims will be asserted at trial. If Finjan maintains all of the Patents-in-Suit in this case, PAN estimates the trial will take approximately five court days.

17. Disclosure of Non-party Interested Entities or Persons.

The parties have filed Certifications of Interested Entities or Persons pursuant to Civil Local Rule 3-15. (Dkt. No. 3 (Finjan's certification); Dkt. No. 25 (PAN's certification).)

Finjan converted from a corporation to a limited liability company, and in conjunction, changed its name from Finjan, Inc. to Finjan LLC. Finjan has filed an unopposed motion to amend the caption to reflect that name change. (Dkt. No. 101.) The Court granted Finjan's motion. (Dkt. No. 103.) The company of which Finjan was a wholly owned subsidiary also went through a similar conversion and changed its name from Finjan Holdings, Inc. to Finjan Holdings LLC. Finjan filed an updated Certification of Interested Parties or Persons to reflect that name

change, as well. (Dkt. No. 102.) Finjan filed an Amended Certification of Interested Parties or Persons to specify that Finjan LLC is wholly-owned by Finjan Holdings LLC, which is wholly-owned by CFIP Goldfish Holdings LLC. (Dkt. No. 213.) Finjan certified that no publicly held corporation owns 10% or more of Finjan LLC's stock. (*Id.*) Finjan also identified Finjan Holdings LLC, CFIP Goldfish Holdings LLC, and Fortress Investment Group LLC as each having a direct or indirect financial interest in Finjan LLC. (*Id.*)

PAN confirms that no other entities have a financial interest in the subject matter in controversy or PAN, or a non-financial interest in that subject matter or PAN that could be substantially affected by the outcome of this proceeding.

18. Professional Conduct

The attorneys of record confirm that they have reviewed the Guidelines for Professional Conduct for the Northern District of California.

19. Other Matters

Pursuant to Patent Local Rule 2-1(b), the parties have also met and conferred regarding the following additional matters:

(1) Proposed modification of the obligations or deadlines set forth in the Patent Local Rules

The parties do not propose any modifications to the obligations or deadlines set forth in the Patent Local Rules at this time.

(2) The scope and timing of any claim construction discovery including disclosure of and discovery from any expert witness permitted by the court

A claim construction order issued on June 14, 2024. (Dkt. No. 290). The parties reserve the right to raise with the Court additional claim construction disputes that arise pursuant to *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008).

(3) The format of the Claim Construction Hearing, including whether the Court will hear live testimony, the order of presentation, and the estimated length of the hearing

A claim construction order issued on June 14, 2024. (Dkt. No. 290).

(4) How the parties intend to educate the court on the technology at issue

The Technology Tutorial took place on May 24, 2024. (Dkt. No. 284).

Respectfully Submitted,

DATED: July 18, 2024

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1 DATED: July 18, 2024

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ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document.

/s/ Roger A. Denning
Roger A. Denning

APPENDIX A**Proposed Case Schedule**

<u>Event</u>	<u>Joint Proposal</u>
Opening Summary Judgment/ <i>Daubert</i> Briefs	September 11, 2024
Responsive Summary Judgment/ <i>Daubert</i> Briefs	October 2, 2024
Reply summary judgement/ <i>Daubert</i> briefs	October 16, 2024
Summary judgment/ <i>Daubert</i> Hearing	November 14, 2024 Subject to the convenience of the Court

<u>Event</u>	<u>Finjan's Proposal</u>	<u>PAN's Proposal</u>
Joint Pretrial Statement and Order	January 17, 2025	April 28, 2025
File Motions <i>in limine</i>	January 24, 2025	May 19, 2025
Exchange of Exhibits	January 31, 2025	May 19, 2025
Parties to provide Court with Pre-marked Exhibits	February 7, 2025	May 23, 2025
File and Serve Deposition Designations	February 7, 2025	May 23, 2025
File and Serve Jury Voir Dire Questions, Proposed Jury Instructions and Proposed Jury Verdict Forms	February 7, 2025	May 23, 2025
Trial Briefs Due	February 7, 2025	May 23, 2025

<u>Event</u>	<u>Finjan's Proposal</u>	<u>PAN's Proposal</u>
File Oppositions to Motions <i>in limine</i>	January 31, 2025	May 26, 2025
Final Pretrial Conference	February 12, 2025 Subject to the convenience of the Court	Subject to the convenience of the Court's calendar, on or after May 29, 2025
Trial	February 17, 2025 Subject to the convenience of the Court	Subject to the convenience of the Court's calendar, beginning June 9, 2025

APPENDIX B**Other Pending Proceedings Involving The Patents-in-Suit**

On October 26, 2018, Finjan filed a lawsuit against Fortinet, Inc. in this district (Case No. 3-18-cv-06555), alleging that Fortinet infringes six of the ten patents asserted against PAN in the instant lawsuit—specifically the '968 Patent, the '822 Patent, the '731 Patent, the '633 Patent, the '408 Patent, and the '494 Patent—and three additional patents. However, in the *PAN* litigation, the Court dismissed the '822 Patent and the '968 Patent, and the parties have dismissed the '780 Patent, the '494 Patent, and the '926 Patent, per the agreed stipulation referenced above. This case is pending before Judge Donato in the San Francisco division and is currently stayed. PAN notes that the Court stayed the case due to overlapping issues in Finjan's other cases, *e.g.*, "case management issues with respect to the multiple cases in this district in which the same Finjan patents and claims are asserted." (Dkt. Nos. 32, 38, 43.) Finjan notes that this case, as discussed in Section 2 (Facts) and Section 8 (Discovery), is much further along procedurally than the *Fortinet* case. For example, *Fortinet* was stayed before any appreciable discovery was completed. In contrast, the parties in this case have served infringement, invalidity, and damages contentions, and fully briefed claim construction. Furthermore, this case was previously stayed more than five years for PAN to litigate its 13 IPRs against the Asserted Patents—prevailing on just three of 198 challenged claims.

CASE MANAGEMENT ORDER

The above Joint Case Management Statement AND PROPOSED ORDER is approved as the Case Management Order for this case and the parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____

United States Chief District Court Judge
Honorable Richard Seeborg